



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 27, 2010

Mr. Kerry D. Sullivan  
General Counsel  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025

OR2010-14641

Dear Mr. Sullivan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID#394839.

The State Office of Administrative Hearings ("SOAH") received a request for all records, including public dockets, related to a request made by a specified taxpayer to appeal a contention of the Texas Comptroller of Public Accounts (the "comptroller") for taxes, fees, fines, penalties, and interest due to the State of Texas from January 1, 2001 through December 31, 2004.<sup>1</sup> You state you have released the public dockets to the requestor.<sup>2</sup> You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that other statutes make confidential, such as section 2003.104 of the Government Code. Section 2003.104 addresses the confidentiality of tax division information, and provides:

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<sup>1</sup>We note the requestor clarified his request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>You state the docket does not identify the taxpayers involved in cases referred by the comptroller.

(a) [SOAH] shall keep information that identifies a taxpayer who participates in a case under this subchapter confidential, including the taxpayer's name and social security number.

(b) The provision of information to [SOAH] that is confidential under any law, including Section 111.006, 151.027, or 171.206, Tax Code, does not affect the confidentiality of the information, and [SOAH] shall maintain that confidentiality.

(c) A hearing conducted under this subchapter is confidential and not open to the public.

*Id.* § 2003.104. You state that SOAH holds contested case hearings pursuant to subchapter D of chapter 2003 of the Government Code on tax and fee-related disputes referred by the comptroller. *See id.* § 2003.101(a). We understand the responsive records are in relation to such a case. You note the request in this instance identifies the taxpayer whose records are at issue. You assert that by providing information in response to a request where the taxpayer is identified in the request, SOAH would be revealing the identity of the taxpayer who participated in a contested case hearing conducted pursuant to subchapter D of chapter 2003 of the Government Code. You further assert the act of providing any redacted information in response to a request pertaining to a specified taxpayer would effectively identify the taxpayer that participated in the case because information pertaining to any other taxpayer would not be responsive. Upon review, we agree in this instance, the requested information is generally confidential pursuant to section 2003.104 of the Government Code.

However, the responsive records contain a final order signed by an administrative law judge with SOAH. Section 2001.004 of the Government Code states "a state agency shall . . . make available for public inspection all final orders, decisions, and opinions." *Id.* § 2001.004. Therefore, the order is public by statute.

Thus, although the order is generally confidential under section 2003.104 of the Government Code, section 2001.004 of the Government Code makes it public. Consequently, there is a conflict of laws between section 2003.104 of the Government Code and section 2001.004 of the Government Code. Where general and specific statutes are in irreconcilable conflict, the specific provision prevails over the general. *See id.* § 311.026(b); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, because section 2003.104 of the Government Code specifically provides for the confidentiality of the identity of a taxpayer involved in a contested case under subchapter D of chapter 2003, this provision is more specific than section 2001.004, which generally governs access to final orders, decisions, and opinions. Thus, the confidentiality of section 2003.104 of the Government Code prevails over the more general access provision

of section 2001.004 of the Government Code. Accordingly, SOAH must withhold the submitted information in its entirety pursuant to section 2003.104 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'VB', with a long horizontal line extending to the right.

Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID#394839

Enc. Submitted documents

c: Requestor  
(w/o enclosures)